CrA 981/95 (2)

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 156 Name भाडवी कोन्दा

Father's Name इडिया Residence ग्राम - धौना -

Age 55 Sentenced to आजीवन कारावास on

7.4.95 under Section 302 I.P.C by III अति० सत्र न्याया० जगदलपुर

S.T.No. 203/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.

2. Date of which copy received :- 7.4.95

3. Date on which Appelisent :- 25.4.95

4. Whether the prisoner wished to be represented or not : Yes/~~No.~~

No. 156 Name भाडवी कोन्दा s/o इडिया

Continued in जिला Jail जगदलपुर जेलर

No. 21 /~~जेलर/जे०प०~~/95 Dated 25/4.95

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./
Sub Jail.

Date of receipt in C.J.M's Office. 28.4.95

Date of receipt of record of accompany. —

Memo of Appeal of the Appelliate Court. —

No. 57 Dated 1.5.95

Forwarded to the H'ble Sessions Judge Jagdalpur.

C.J. Magistrate 1.5.95
CHIEF JUDICIAL MAGISTRATE
JAGDALPUR

Date of receipt of Appelliate Court. _____

7/4/95 to 25/4 within time

(13)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 981/1995

Madvi Konda

V.

State of Madhya Pradesh (now State of Chhattisgarh)

J U D G M E N T

(14)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 981/1995

Madvi Konda

V.

State of Madhya Pradesh (now State of Chhattisgarh)

Coram: Hon'ble Shri Fakhruddin, Ag. Chief Justice
Hon'ble Shri Justice Dilip Raosaheb Deshmukh, J.

Shri Akhil Mishra, Counsel for the appellant.

Shri M.P.S.Bhatia, P.L. for the State.

J U D G M E N T
(Delivered on 08.11.2005)

The following oral judgment of the Court is delivered by

Dilip Raosaheb Deshmukh, J. :

This appeal is directed against the judgment dated 7th April 1995 delivered by Shri S.K.Awadhia, 3rd Addl. Sessions Judge, Bastar, place Jagdalpur in sessions case No.203/93 whereby the appellant was convicted under Section 302 of the I.P.C. for committing murder of Madvi Handa and was sentenced to imprisonment for life.

2. The factual matrix briefly stated is that there was an old dispute between the appellant and the deceased regarding a *Salfi* tree. In the intervening night of 3rd and 4th of January 1993 the appellant went to the house of Madvi Handa. Madvi Handa was sleeping inside the house. The appellant proclaimed that he would

not give the *Salfi* tree to Madvi Handa since the said tree belonged to him. Hearing the shouts of the appellant, Madvi Handa came out of his house. In the darkness the appellant, who was armed with a Bow and arrow, shot an arrow on Madvi Handa. The arrow struck Madvi Handa on left side of chest causing a penetrating wound. The appellant ran away with his Bow. Next day at about 11.00 A.M. there was a Panchayat in which the appellant made an extra judicial confession that he had shot an arrow on Madvi Handa to kill him. The Panchas saw the arrow inside the chest of Madvi Handa. F.I.R. was lodged by Madvi Handa in Police Station Katekalyan on 4.1.1993 at 4.50 P.M. vide Ex.P.10. An offence under Section 307 I.P.C. was registered. Madvi Handa was sent for medical examination. Dr. Manoj Verma who examined him found one arrow penetrated inside left side of the chest. He also found that the wound had developed septicemia.

3. Madvi Handa was operated upon by Dr.Pradeep Pandey P.W. 7 on 5.1.1993 who removed the arrow from the left side of the chest and found that there was lot of puss inside the stomach. The diaphragm inside left side of the chest was cut. The large intestine and small intestine were also cut at several places. Madvi Handa succumbed to the injuries on 7.1.1993. Dr. K.R.Mourya P.W.6 who conducted the post-mortem examination found a penetrating wound on left side of chest over anterior auxiliary line 3" x 2" deep to the thoracic abdominal cavity. Direction of the wound and was downward medially and towards abdominal cavity from thoracic cavity wound was at the level of the 7th intercostals

space. In his opinion, death of Madvi Handa was caused due to shock and septicemia, as a result of the injury sustained by Madvi Handa. The arrow was seized vide Ex.P.12 on 4.1.1993. After completion of investigation, the appellant was prosecuted under Section 302 I.P.C.

4. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 10 witnesses. The trial Judge relying upon the evidence led by the prosecution convicted the appellant for committing murder of Madvi Handa under Section 302 I.P.C. and sentenced him as aforesaid in paragraph-1.

5. Learned counsel for the appellant has mainly contended that the evidence led by the prosecution does not bring home the guilt of the appellant under Section 302 of the I.P.C. In the alternative, he also contended that the appellant did not intend to cause death of Madvi Handa. The arrow was shot at Madvi Handa by the appellant in darkness from quite a distance. Death of Madvi Handa was also not caused instantaneously. The testimony of Dr. Pradeep Pandey P.W.7 also showed that if proper treatment had been made available, the life of Madvi Handa could have been saved. Besides, the medical evidence led by the prosecution clearly showed that death of Madvi Handa was caused due to septicemia. On these grounds, learned counsel for the appellant has in the alternative argued that at the most the offence, if any, committed by the appellant does not travel beyond Section 304 Part-II of the I.P.C. He further contended that the appellant was in jail since

7.1.1993 and had already undergone incarceration for more than 12 years. Therefore, the custodial sentence already undergone by the appellant would be sufficient to meet the ends of justice. On the other hand, learned counsel has argued in support of the judgment of the trial Court.

6. We have heard the rival contention and have also perused the record. The learned trial Judge has relied upon the ocular testimony of Madvi Panday P.W.3 who is the mother of the deceased. She has stated that while she was cooking food, the appellant came and started shouting whereupon Madvi Handa came out of the house. The appellant said that the *Salfi* tree belonged to him while Madvi Handa claimed ownership of the *Salfi* tree. On this, the appellant shot an arrow on Madvi Handa. It penetrated the chest of Madvi Handa. This part of her testimony is wholly unrebutted in cross-examination. It also finds corroboration from the medical evidence of Dr. K.R.Mourya P.W.6 who had conducted the post-mortem examination on Madvi Handa and had found a penetrating wound on left side of chest which has been described in detail in paragraph 4. Dr. Pradeep Pandey P.W.7 has also testified that on 5.1.1993 he had removed the arrow from the left side chest of Madvi Handa and has stated that there was puss in the stomach and found large and small intestines were cut at several places. Sub-Inspector P.R.Netam P.W.10 has proved the F.I.R. lodged by the deceased Madvi Handa which also corroborates the above testimony. In our considered opinion, therefore, the learned trial Judge has rightly come to the

conclusion that the appellant had caused the death of Madvi Handa by shooting an arrow on him.

7. The only point which requires our consideration is the nature of offence committed by the appellant. The prosecution story itself reveals that the offence was committed at the dead of night. The appellant had gone to the house of the deceased only to proclaim his ownership of the *Salfi* tree and it was only after Madvi Handa came out and started quarrelling over the ownership of the *Salfi* tree that the appellant shot an arrow on Madvi Handa. The evidence led by the prosecution also shows that only a single arrow was shot at by the appellant on Madvi Handa. No further injury was caused by the appellant. It was also borne out from the medical evidence led by the prosecution that prompt medical treatment could have saved the life of Madvi Handa who let the arrow remain inside the chest till quite some time and had attended the Panchayat on the next day and had also gone to lodge the F.I.R. at P.S. Katekalyan without removing the arrow from the chest. The testimony of Dr. Pradeep Pandey P.W.7 leaves no manner of doubt that if a prompt F.I.R. was lodged and medical assistance received, the life of Madvi Handa could have been saved. The post-mortem report Ex.P.6 also shows that septicemia and shock were the root cause of death. In our considered opinion, the time of occurrence, the manner in which the incident took place and the single arrow shot at Madvi Handa by the appellant at the dead of night, the requisite intention for causing the death of Madvi Handa cannot be attributed to the appellant in this case

since the evidence led by the prosecution does not substantiate that the appellant went to the house of Madvi Handa to cause his death. However, the manner in which the arrow was shot at Madvi Handa, it can safely be said that the appellant had knowledge that the injury to be sustained by Madvi Handa was likely to cause his death. In our considered opinion, therefore, the offence committed by the appellant does not travel beyond Section 304 Part-II of the I.P.C.

8. In the result, the appeal is partly allowed. The conviction of the appellant under Section 302 of the I.P.C. and the sentence awarded thereunder are set aside. Instead, the appellant is convicted under Section 304 Part-II of the I.P.C. and is sentenced to rigorous imprisonment for 10 years. The appellant has already undergone incarceration for more than 12 years and 10 months. The appellant shall therefore be set at liberty forthwith, if not required in any other case.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani